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18 September 1985

MEMORANDUM FOR THE RECORD

SUBJECT: Polygraph Legislation - H.R. 1524 and 1924: Mark up

1. On 18 September 1985, I attended the hearing and mark-up held by the Subcommittee on Employment Opportunities of the House Committee on Education and Labor on H.R. 1524 and 1924. As per my earlier memo, we had, through Rob Gabany in Representative McKinney's office, inserted language in the bill clearly exempting the Agency and other agencies in the Intelligence Community. When I arrived, the hearing portion was coming to a conclusion with a representative of Days Inn Corporation concluding his testimony. The hearing portion of the proceeding was then adjourned and the mark-up portion convened.

2. At the markup, Representative Williams reported an amendment in the nature of substitute which was to do four things: 1) create a counterintelligence exemption through incorporation by reference of certain provisions in the 1986 DOD Authorization Bill conference; 2) protect "whistle blowers"; 3) repeat the enforcement provisions of the Fair Labor Standards Act Amendments (the enforcement vehicle for this legislation); and 4) make certain technical changes.

3. Representative Henry then offered an amendment to the substitute on behalf of Representative McKinney which was to be the amendment which I had worked out with Rob Gabany. The Subcommittee accepted Representative Williams' amendment in the nature of the substitute and the Henry Amendment to the Williams Amendment. Representative Gunderson asked why a contractor exemption was needed. Representative Henry brought to his attention the Justice letter which this office had cleared on the 17th. Representative Gunderson accepted that rationale and the letter was made part of the record. A copy of the amendments were not available, but Mr. Gabany promised to allow me to pick them up the next day.

4. Afterward, Rob Gabany stated that he expected the full Committee to markup the bill within the next 10 days to 2 weeks. At that time, he stated that Representative Henry would work to broaden the DOD exemption. I promised to work with him to insure the intelligence exemption remains in the legislation.

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Distribution

Original - Leg/Sub - Polygraph

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STAT LEG/OLL [Redacted] (19 September 1985)

Office of Legislative Liaison
Routing Slip

TO:	ACTION	INFO
1. D/OLL		X
2. DD/OLL		X
3. Admin Officer		
4. Liaison		
5. Legislation	X	
6		X
7		X
8.		
9.		
10.		

SUSPENSE Sept 17, 1985
DateAction Officer: Remarks: Action completed as per
MFR dated 9/18/85GJ / Sept 17, 1985
Name/Date



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

September 17, 1985

LEGISLATIVE LIAISON

85-2726

LEGISLATIVE REFERRAL MEMORANDUM

TO: Department of Defense - Werner Windus (697-1305)
 Department of Energy - Bob Rabben (252-6718)
 National Aeronautics and Space Administration - Toby Costanzo (453-1080)
 Department of Transportation - John Collins (426-4687)
 Central Intelligence Agency
 National Security Council
 Department of Labor - Seth Zinman (523-8201)
 Department of Commerce - Michael Levitt (377-3151)
 Department of the Treasury - Art Schissel (566-8523)
 Office of Personnel Management - Bob Moffit (632-6516)

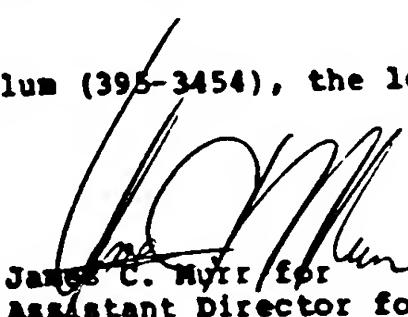
SUBJECT: Draft DOJ report on H.R. 1524, the "Polygraph Protection Act of 1985"

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please provide us with your views no later than 4:00 P.M. TODAY
SEPTEMBER 17, 1985.

(Note: The Employment Opportunities Subcommittee of the House Education and Labor Committee has scheduled a mark-up of H.R. 1524 for tomorrow.)

Direct your questions to Branden Blum (395-3454), the legislative attorney in this office.


 James C. Myrr for
 Assistant Director for
 Legislative Reference

Enclosure

cc: F. Fielding
 J. Cooney

P. Szervo
 K. Wilson

A. Donahue
 T. Stanners

K. Schwartz
 H. Schreiber



Office of the Assistant Attorney General

Washington, D.C. 20530

DRAFT

Honorable Augustus P. Hawkins
Chairman
Committee on Education and Labor
U.S. House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

This is to proffer the views of the Department of Justice regarding H.R. 1524, the proposed Polygraph Protection Act of 1985.

We take no position on the policy merits of H.R. 1524. However, we do object to the bill's failure to provide an exemption for using the polygraph in situations involving employees of government contractors performing work for the government related to the national defense and national security. Despite the close working relationship between the federal government and federal contractors, employees of contractors are not considered to be government employees and, therefore, the exemption for government employees provided in Section 8 of the bill would not apply to contractor employees.

For this reason, we oppose enactment of H.R. 1524 without an amendment which would exempt government contractor employees from coverage by the bill.

The Office of Management and Budget has advised this Department that it has no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely,

Phillip D. Brady
Acting Assistant Attorney General

99TH CONGRESS
1ST SESSION

H. R. 1524

To prevent the denial of employment opportunities by prohibiting the use of lie detectors by employers involved in or affecting interstate commerce.

IN THE HOUSE OF REPRESENTATIVES

MARCH 7, 1985

Mr. WILLIAMS (for himself, Mr. MARTINEZ, Mr. FORD of Michigan, Mr. KEMP, Mr. MCKINNEY, Mr. HAYES, Mr. OWENS, Mr. DYNALLY, Mr. BOUCHER, Mr. MURPHY, Mr. TAUKE, Mr. LOWERY of Washington, Mr. COURTER, and Mr. EDWARDS of California) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To prevent the denial of employment opportunities by prohibiting the use of lie detectors by employers involved in or affecting interstate commerce.

- 1 *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*
- 2 **SECTION 1. SHORT TITLE.**
- 3 This Act may be cited as the "Polygraph Protection Act
- 4 *of 1985".*

1 SEC. 2 PURPOSE.

2 It is the purpose of this Act to prevent the denial of
3 employment opportunities based on the use of instrumenta-
4 tion designed to detect deception or verify truth of statement.
5 This Act shall be construed to prohibit the use of all such
6 instrumentation on employees, agents, prospective employees
7 and prospective agents.

8 SEC. 3 PROHIBITIONS ON LIE DETECTOR USE.

9 No employer or other person engaged in any business in
10 or affecting interstate commerce, nor any agent or represent-
11 ative thereof, shall—

12 (1) directly or indirectly require, request, suggest,
13 permit or cause any employee, agent, prospective em-
14 ployee or prospective agent to take or submit to any
15 lie detector test or examination for any purpose what-
16 soever;

17 (2) use, accept, or refer to the results of any lie
18 detector test or examination of any employee, agent,
19 prospective employee or prospective agent for any pur-
20 pose whatsoever; or

21 (3) discharge, dismiss, discipline in any manner, or
22 deny employment or promotion, or threaten to do so,
23 to any employee, agent, prospective employee or pro-
24 spective agent who refuses, declines, or fails to take or
25 submit to any lie detector test or examination.

1 SEC. 4. NOTICE OF PROTECTION.

2 The Secretary of Labor shall prepare and have printed a
3 notice setting forth information necessary to effectuate the
4 purposes of this Act. This notice shall be posted at all times
5 in conspicuous places upon the premises of every employer
6 engaged in any business in or affecting interstate commerce.

7 SEC. 5. RULES AND REGULATIONS.

8 In accordance with the provisions of subchapter II of
9 chapter 5 of title 5, United States Code, the Secretary of
10 Labor shall issue such rules and regulations as may be neces-
11 sary or appropriate for carrying out this Act.

12 SEC. 6. AUTHORITY OF THE SECRETARY OF LABOR

13 The Secretary of Labor shall—

14 (1) make such delegations, appoint such agents
15 and employees, and pay for such technical assistance
16 on a fee for service basis, as he deems necessary to
17 assist him in the performance of his functions under
18 this Act;

19 (2) cooperate with regional, State, local, and other
20 agencies, and cooperate with and furnish technical as-
21 sistance to employers, labor organizations, and employ-
22 ment agencies to aid in effectuating the purposes of
23 this Act; and

24 (3) make investigations and require the keeping of
25 records necessary or appropriate for the administration
26 of this Act in accordance with the powers and proce-

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1 dures provided in sections 9 and 11 of the Fair Labor
2 Standards Act of 1938 (29 U.S.C. 209 and 211).

3 **SEC. 7. ENFORCEMENT PROVISIONS.**

4 The provisions of this Act shall be enforced in accord-
5 ance with the powers, remedies, and procedures provided in
6 sections 11(b), 16, and 17 of the Fair Labor Standards Act of
7 1938 (29 U.S.C. 211(b), 216, 217). Amounts owing to a
8 person as a result of a violation of this Act shall be deemed to
9 be unpaid minimum wages or unpaid overtime compensation
10 for purposes of sections 16 and 17 of the Fair Labor Stand-
11 ards Act of 1938 (29 U.S.C. 216, 217).

12 **SEC. 8. NO APPLICATION TO GOVERNMENTAL EMPLOYEES.**

13 The provisions of this Act shall not apply with respect
14 to any individual who is employed by the United States Gov-
15 ernment, a State government, city, or any political subdivi-
16 sion of a State or city.

17 **SEC. 9. DEFINITIONS.**

18 As used in this Act—

19 (1) The term "person" means any natural person,
20 firm, association, partnership, corporation, or any em-
21 ployee or agent thereof.

22 (2) The term "lie detector" includes but is not
23 limited to any polygraph, deceptograph, voice stress
24 analyzer, psychological stress evaluator, or any other
25 device (whether mechanical, electrical, or chemical)

1 which is used, or the results of which are used, for the
2 purpose of detecting deception or verifying the truth of
3 statements.

4 (3) The term "employer" includes an employment
5 agency.

6 **SEC. 10. EFFECTIVE DATE.**

7 The provisions of this Act shall take effect on the date
8 of enactment, except for section 4, which shall take effect six
9 months from the date of enactment.

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